

12-15-04

AF/3627
PATENT
ZPW

Serial No. 09/528,693

Attorney Docket No. 2000P07518US (1009-026)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : James Wright et al.
Serial No. : 09/528,693
Filed : 20 March 2000
For : METHOD, SYSTEM AND APPARATUS FOR PROVIDING
PRODUCT INFORMATION OVER THE INTERNET
Art Unit : 3627
Examiner : Andrew J. Fischer
Docket No. : 2000P07518US (1009-026)

Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37(a)

Sir:

The Applicants respectfully submit this appeal brief in response to the Office Action of 18 May 2004 finally rejecting each of the pending claims 1-6. This Appeal Brief is in furtherance of the Notice of Appeal filed 18 October 2004.

12/16/2004 JADD01 00000052 09528693

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I. REAL PARTY IN INTEREST

The real party in interest is Siemens Energy & Automation, Inc., a corporation having a place of business at 3333 Old Milton Parkway, Iselin, GA 3005.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-6 are pending in this application and have been finally rejected. Claims 7-20 were cancelled. Claims 1-6 were rejected and are the subject of this appeal. Claim 1 is the independent claim.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

Independent Claim 1 recites a system (see at least paragraph 18; Figure 1 indicator 102 and product 106) for providing product information (see at least paragraph 29; Figure 4 product information 404) for a predetermined product (see at least paragraph 18; Figure 1 product 106). The system comprises a product information apparatus (see at least paragraph 18; Figure 1 label 100) comprising an indicator (see at least paragraph 18; Figure 1 indicator 102) associated with a predetermined product (see at least paragraph 18; Figure 1 product 106), wherein the indicator (see at least paragraph 18; Figure 1 indicator 102) is contained in a memory (see at least

paragraph 23; Figure 2 memory 200). The system also comprises the predetermined product (see at least paragraph 18; Figure 1 product 106), which is coupleable to a programmable logic controller (see at least paragraph 26), wherein the programmable logic controller (see at least paragraph 26) is coupleable to a network (see at least paragraph 26). The indicator (see at least paragraph 18; Figure 1 indicator 102) is indicative of a network web page (see at least paragraph 29; Figure 4) where product information (see at least paragraph 29; Figure 4 product information 404) is provided for the predetermined product (see at least Figure 1 product 106). The network web page (see at least paragraph 29; Figure 4) comprises an on-line product support help window (see at least paragraph 29; Figure 4 help window 410).

Dependent Claim 2

To independent Claim 1, Claim 2 adds that the indicator (see at least paragraph 18; Figure 1 indicator 102) is specific to each product (see at least paragraph 18; Figure 1 product 106), such that a plurality of indicators (see at least paragraph 18; Figure 1 indicator 102) that direct to a plurality of web pages (see at least paragraph 29; Figure 4) are provided, each web page (see at least paragraph 29; Figure 4) providing specific product information (see at least paragraph 29; Figure 4 product information 404) relevant to a specific product (see at least paragraph 18; Figure 1 product 106).

Dependent Claim 3

To independent Claim 1, Claim 3 adds that the indicator (see at least paragraph 18; Figure 1 indicator 102) is an URL of a web page (see at least paragraph 18; Figure 1 indicator 102).

Dependent Claim 4

To independent Claim 1, Claim 4 adds that the system further comprises a label (see at least paragraph 18; Figure 1 label 100) affixed to the predetermined product (see at least

paragraph 18; Figure 1 product 106), wherein the label (see at least paragraph 18; Figure 1 label 100) comprises the memory (see at least paragraph 23; Figure 2 memory 200).

Dependent Claim 5

To independent Claim 1, Claim 5 adds that the memory (see at least paragraph 23; Figure 2 memory 200) is a micro-chip memory (see at least paragraph 24).

Dependent Claim 6

To independent Claim 1, Claim 6 adds that the programmable logic controller (see at least paragraph 26) is coupled to the network (see at least paragraph 26) via means (see at least paragraph 26) for automatically interfacing to the Internet (see at least paragraph 26) to access the web page (see at least paragraph 29; Figure 4) based on the indicator (see at least paragraph 18; Figure 1 indicator 102).

VI. GROUNDS OF REJECTION

Claims 1-6 were rejected as anticipated under 35 U.S.C. §102(b). In support of the rejection, Cragun (U.S. Patent No. 5,804,803) was cited.

Claims 1-6 were rejected as anticipated under 35 U.S.C. §102(e). In support of the rejection, Reber (U.S. Patent No. 5,940,595) was cited.

Claims 1-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cragun in view of Ohanian (U.S. Patent No. 6,109,526).

Claims 1-6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hudetz (U.S. Patent No. 5,978,773) in view of Ohanian.

VII. ARGUMENT

A. General Legal Standards

To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

B. General Argument Regarding Lexicography

Paragraph 19 of the Office Action dated 30 July 2003 first adopted definitions for certain claim terms. Specifically, a definition for “programmable logic device”, namely “a logic chip that

is programmed by the customer rather than by the manufacturer ...Acronym: PLD”, was asserted. Without providing **any** factual support or reasoning, the defined “programmable logic device” (PLD) was opined to be equivalent to the claim term “programmable logic controller”. In the Reply to that Office Action filed on 23 September 2003, the adopted definitions, and particularly the determination that a “programmable logic controller is a PLD”, were traversed as factually erroneous. That traverse stands.

“A technical term used in a patent document is interpreted as having the meaning that it would be given by persons experienced in the field of the invention, unless it is apparent from the patent and the prosecution history that the inventor used the term with a different meaning.” *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1578, 38 USPQ2d 1126, 1129 (Fed. Cir. 1996).

The definition adopted in the 30 July 2003 Office Action for “programmable logic controller” is erroneous since that definition does not have the meaning that it would be given by persons experienced in the field on the date on the filing date of the present application, 20 March 2000. During examination, **no** evidence was provided supporting the definition of “programmable logic controller” used in the 30 July 2003 Office Action.

In traversing this definition, a first Declaration was filed under 37 CFR § 1.132. The Declaration, included herein as Appendix B, was authored and signed by Dr. Ronald D. Williams on 28 February 2004. The first Declaration of Dr. Williams was entered into the file wrapper on 3 March 2004 and was acknowledged and discussed by the Examiner on page 11 of the Final Office Action dated 18 May 2004.

As indicated in paragraphs 1-6 of the first Declaration, Dr. Williams was one skilled in the art of electrical engineering as of 20 March 2000, the filing date of the application under appeal. Paragraphs 10-11 of the first Declaration of Dr. Williams indicate that the definition used by the examiner is improper because “one skilled in the art would not interpret the term programmable logic controller (PLC) to mean ‘A logic chip that is programmed by the customer rather than by

the manufacturer’.” In paragraph 12 of the first Declaration, Dr. Williams states “one skilled in the art would interpret the term ‘programmable logic controller’ to mean a device that follows programmed instructions to provide automated monitoring and/or control functions over a machine and/or process by evaluating a set of inputs. A PLC can be used, for example, to automate complex functions and/or control an industrial process, for example, in machining, packaging, materials handling, and/or other applications.”

In response to Dr. Williams first Declaration, the Final Office Action dated 18 May 2004 stated:

“[t]he Williams Declaration does not address the scope of claim interpretation during ex parte examination. Although the Williams Declaration states the Examiner’s definition is incorrect, the Williams Declaration fails to state why the Examiner’s definitions are not proper in this context. Moreover, not only does the Williams Declaration fail to provide objective evidence as to why the Examiner’s definitions are improper, the Williams Declaration fails to provide evidence as to why Dr. William’s definition should be controlling.”

As an initial matter, without a showing otherwise, the Williams Declaration is objective evidence. Because Dr. Williams is one of ordinary skill in the art, and because Dr. Williams’ definition is the only supported definition of record that addresses the actual claim term “programmable logic controller”, the definition of Dr. Williams must be controlling.

Nevertheless, responsive to the assertions in the Final Office Action and the implicit request for additional evidence supporting Dr. Williams’ first Declaration, a second Declaration was executed by Dr. Williams on 4 August 2004. The second declaration was entered into the file wrapper on 6 August 2004 and discussed by the Examiner in an Advisory Action dated 8 October 2004.

In that Advisory Action, however, a box was checked next to the statement “[t]he affidavit will not be considered because it is not directed SOLELY to issues which were newly

raised by the Examiner in the final rejection”. Further, on the last page of that Advisory Action, the Examiner stated that “[t]he second Williams Declaration filed August 6, 2004 has not been entered. The Second Williams Declaration would require further consideration.”

With all due respect, the statement that the “affidavit will not be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection” is not a proper grounds for excluding a Declaration under 37 CFR 1.116. Likewise, the statement that “[t]he Second Williams Declaration would require further consideration” is not a proper grounds for excluding a Declaration under 37 CFR 1.116.

Instead, 37 CFR 1.116 states that “[a]n affidavit or other evidence submitted after a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title), may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented.”

Because the Final Office Action raised a new issue challenging Dr. Williams’ status as one skilled in the art, implicitly requested explicit reasons why the definition presented in the 30 July 2003 Office action were improper, and implicitly requested additional objective evidence supporting Dr. Williams’ definition of the term “programmable logic controller”, admission of the second Declaration of Dr. Williams was and remains appropriate under 37 CFR § 1.116(e).

Applicant further submits that the appearance of the second Declaration in the publicly-viewable USPTO PAIR File Wrapper indicates that the USPTO entered the second Declaration in the record under 37 CFR § 1.116(e). That USPTO PAIR File Wrapper states that “[t]his application is officially maintained in electronic form. To View, Click the desired Document Description....” Thus, the “officially maintained” application is the PAIR File Wrapper. The PAIR File Wrapper for the present application includes the second Declaration. Consequently, the second Declaration has been entered into the only “officially maintained” record in existence

for the present application. If the second Declaration had not been entered into the PAIR File Wrapper, it would not be available for public access, viewing, and downloading.

Paragraphs 11-15 of the second Declaration of Dr. Williams clearly explain why the definition for “programmable logic controller” adopted in the 30 July 2003 Office Action is factually incorrect. Paragraphs 17 and 18 provide objective evidence for a proper definition of “programmable logic controller” as “a digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic to control through digital or analog input/output modules, various types of machines or processes”. In support of this definition, in paragraph 18 Dr. Williams cited NEMA Standard ICS 3-1978, Part ICS3-304 (5). Paragraphs 19 and 20 of Dr. Williams’ second Declaration explicitly explain that Dr. Williams’ definition should be controlling because the definition provided in the Office Action dated 30 July 2003 “does not reflect the meaning of ‘programmable logic controller’ as understood by one skilled in the art.”

Because Dr. Williams’ definition for “programmable logic controller” has “the meaning that it would be given by persons experienced in the field of the invention”, Dr. Williams’ definition controls in claim construction. Utilizing a definition that is unrecognized by those of skill in the art would be illogical, counter-productive, and contrary to law.

C. The Rejection of Claims 1-6 Under 35 U.S.C. §102(b) in View of Cragun

1. Independent Claim 1

Independent claim 1 recites “an indicator associated with a predetermined product, said indicator contained in **a memory**”. Cragun allegedly recites “[i]n the preferred embodiment, scanning device 118 is a laser scanning bar code reader and code 117 is **a bar code**.” See col. 4, lines 8-9. Cragun does not disclose explicitly or inherently “an indicator associated with a predetermined product, said indicator contained in **a memory**”.

Independent claim 1 recites “the network web page comprising **an on-line product**

support help window". Cragun does not disclose explicitly or inherently "the network web page comprising an **on-line product support help window**".

Independent claim 1 recites "said predetermined product coupleable to a **programmable logic controller**, said programmable logic controller coupleable to a network". Cragun allegedly recites a "**client computer** [that] scans the object of interest and translates the code into a URL that specifies both the server computer and the location within the server of information that is relevant to the object". See col. 2, lines 12-16.

Paragraphs 18-21 of Dr. Williams' first Declaration provide evidence that one skilled in the art would find that Cragun does not disclose explicitly or inherently "said predetermined product coupleable to a programmable logic controller". Further, Cragun does not disclose explicitly or inherently an "indicator indicative of a network web page where product information is provided for the predetermined product, the network web page comprising an on-line product support help window."

Moreover, Cragun fails to properly establish inherent anticipation. See MPEP 2112. "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that admittedly the "missing descriptive material is 'necessarily present'" in Cragun.

Accordingly, it is respectfully submitted that Cragun does not anticipate independent claim 1. Furthermore, because independent claim 1 is not anticipated, it stands that claims 2-6, each ultimately depending from claim 1, are also not anticipated by Cragun.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

2. Dependent Claim 4

Dependent claim 4 recites "a label affixed to the predetermined product, wherein said label comprises said **memory**". Cragun allegedly recites "[i]n the preferred embodiment,

scanning device 118 is a laser scanning bar code reader and code 117 is a **bar code**.” See col. 4, lines 8-9. Cragun does not disclose explicitly or inherently “a label affixed to the predetermined product, wherein said label comprises said **memory**”. Accordingly, it is respectfully submitted that Cragun does not anticipate dependent claim 6.

Consequently, reversal of the rejection of claim 4 is respectfully requested.

3. Dependent Claim 5

Dependent claim 5 recites “wherein said memory is a **micro-chip memory**”. Cragun does not disclose explicitly or inherently “wherein said memory is a micro-chip memory”. Instead, Cragun allegedly recites “[i]n the preferred embodiment, scanning device 118 is a laser scanning bar code reader and **code 117 is a bar code**.” Accordingly, it is respectfully submitted that Cragun does not anticipate dependent claim 5.

Consequently, reversal of the rejection of claim 5 is respectfully requested.

D. The Rejection of Claims 1-6 Under 35 U.S.C. §102(e) in View of Reber

Claim 1, upon which claims 2-5 depend, cites “a predetermined product, said predetermined product coupleable to a **programmable logic controller**, said programmable logic controller coupleable to a network, said indicator indicative of a network web page where product information is provided for the predetermined product, the network web page comprising an **on-line product support help window**.”

Paragraphs 18-21 of Dr. Williams’ first Declaration, and paragraphs 21-24 of Dr. Williams’ second Declaration, each provide evidence that one skilled in the art would find that Reber does not disclose explicitly or “a predetermined product, said predetermined product coupleable to a **programmable logic controller**, said programmable logic controller coupleable to a network”.

Further, Reber does not disclose explicitly an “indicator indicative of a network web page

where product information is provided for the predetermined product, the network web page comprising an **on-line product support help window**.”

Moreover, Reber fails to properly establish inherent anticipation. See MPEP 2112. “Inherent anticipation requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002). No evidence has been presented that admittedly the “missing descriptive material is ‘necessarily present’” in Reber.

Accordingly, it is respectfully submitted that Reber does not anticipate independent claim 1. Furthermore, because independent claim 1 is not anticipated, it stands that claims 2-6, each ultimately depending from claim 1, are also not anticipated by Reber.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

E. The Rejection of Claims 1-6 Under 35 U.S.C. §103(a) in View of Cragun and Ohanian

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness.

Ohanian allegedly recites “the present invention embodies a data input apparatus that obtains information relative to a target. The apparatus includes a processor, a wireless data receiver, and an associated data capture engine. The wireless data receiver is coupled to the processor and receives electromagnetic data from at least one resonator, such as a dipole, positioned relative to the target. The data capture engine is also coupled to the processor and receives data from an associated data carrier, such as a machine-readable symbol...” See column 2 lines 10-19.

Paragraphs 18-25 of Dr. Williams’ first Declaration, and paragraphs 25-28 of Dr. Williams’ second declaration, each provide evidence that one skilled in the art would find that Neither Cragun nor Ohanian expressly or inherently teach or suggest “...said predetermined product coupleable to a **programmable logic controller**, said programmable logic controller

couplable to a network, said indicator indicative of a network web page where product information is provided for the predetermined product, the network web page comprising an **on-line product support help window.**” Thus, even if combinable or modifiable, the cited references do not expressly or inherently teach or suggest every limitation of the claims.

Further, attempting to combine Cragun with Ohanian would render one or the other inoperative. For example, attempting to replace Cragun’s “scanning device” (see Fig. 1A element 118) with Ohanian’s “wireless data receiver” (see col.2, lines 14-15) would render Cragun’s system inoperative for its intended function of scanning barcodes.

Thus, there would have been no motivation or suggestion to modify or combine the cited references, and one skilled in the art would not have had a reasonable expectation of success in combining or modify the cited references. In addition, the cited references do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Accordingly, it is respectfully submitted that Cragun in view of Ohanian does not render obvious independent claim 1. Furthermore, because independent claim 1 is not rendered obvious by either cited combination, it stands that claims 2-6, each ultimately depending from claim 1, are also not rendered obvious by Cragun in view of Ohanian.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

F. The Rejection of Claims 1-6 Under 35 U.S.C. §103(a) in View of Ohanian and Hudetz

Hudetz allegedly cites “[a] system and method for using identification codes found on ordinary articles of commerce to access remote computers on a network. In accordance with one embodiment of the invention, a **computer** is provided having a database that relates Uniform Product Code (‘UPC’) numbers to Internet network addresses (or ‘URLs’). To access an Internet resource relating to a particular product, a user enters the product’s UPC symbol manually, by swiping a bar code reader over the UPC symbol, or via other suitable input means.

The database retrieves the URL corresponding to the UPC code. This location information is then used to access the desired resource.” See Abstract.

Paragraphs 22-29 of Dr. Williams’ first Declaration, and paragraphs 25-31 of Dr. Williams’ second Declaration, each provide evidence that one skilled in the art would find that Neither Ohanian nor Hudetz expressly or inherently teach or suggest “an indicator associated with a predetermined product, said indicator contained in a memory...said predetermined product coupleable to a **programmable logic controller**, said programmable logic controller coupleable to a network.”

Further, attempting to combine Hudetz with Ohanian would render one or the other inoperative. For example, attempting to replace Hudetz’ “bar code reader” (see col. 3, line 32) with Ohanian’s “wireless data receiver” (see col.2, lines 14-15) would render Hudetz’ system inoperative for its intended function of scanning barcodes.

Thus, would have been no motivation or suggestion to modify or combine the cited references, and one skilled in the art would not have had a reasonable expectation of success in combining or modify the cited references. In addition, the cited references do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Accordingly, it is respectfully submitted that Ohanian in view of Hudetz does not render obvious independent claim 1. Furthermore, because independent claim 1 is not rendered obvious by either cited combination, it stands that claims 2-6, each ultimately depending from claim 1, are also not rendered obvious by Ohanian in view of Hudetz.

Consequently, reversal of the rejection of claims 1-6 is respectfully requested.

VIII. CLAIMS APPENDIX

Appendix A sets forth all pending claims in the state in which they were appealed.

IX. EVIDENCE APPENDICES

The first Declaration of Dr. Ronald D. Williams, filed herewith as Appendix B, was submitted pursuant to 37 CFR 1.132. The second Declaration of Dr. Ronald D. Williams, filed herewith as Appendix C, was submitted pursuant to 37 CFR 1.132.

X. RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

SUMMARY

In view of the above, Applicants submit that all claims on appeal distinguish over the cited art and respectfully request that the rejections of these claims should be reversed.

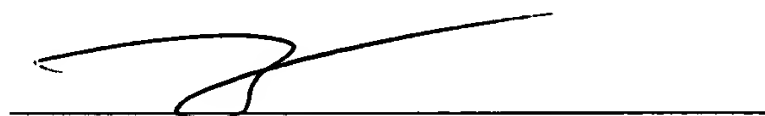
Applicants therefore respectfully request that the Board of Patent Appeals and Interferences reverse the decision rejecting claims 1-6 and direct that the application be passed to issue.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 19-2179. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

Date: 14 December 2004



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PATENT

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APPENDIX A

1. A system for providing product information for a predetermined product comprising:
a predetermined product, said predetermined product coupleable to a programmable logic controller, said programmable logic controller coupleable to a network, said indicator indicative of a network web page where product information is provided for the predetermined product, the network web page comprising an on-line product support help window; and
a product information apparatus comprising an indicator associated with said predetermined product, said indicator contained in a memory.
2. The system of claim 1, wherein said indicator is specific to said predetermined product, such

that a plurality of indicators that direct to a plurality of web pages are provided, each web page providing specific product information relevant to said predetermined product.

3. The system of claim 1, wherein said indicator is an URL of a web page.
4. The system of claim 1, further comprising a label affixed to the predetermined product, wherein said label comprises said memory.
5. The system of claim 1, wherein said memory is a micro-chip memory.
6. The system of claim 5, wherein the programmable logic controller is coupled to the network via means for automatically interfacing to the Internet to access said web page based on said indicator.
7. – 20. (canceled).



PATENT

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P.O. Box 1450

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APPENDIX B

Filed herewith is a copy of the first Declaration of Dr. Ronald D. Williams that was submitted pursuant to 37 CFR 1.132.



**AMENDMENT UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3627
PATENT**

**ATTORNEY DOCKET NO. 2000P7518 US (1009-026)
SERIAL NO. 09/528,693**

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Examiner Andrew J. Fischer

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DECLARATION UNDER 37 C.F.R. § 1.132

Sir:

I, Dr. Ronald D. Williams, a citizen of the United States, whose full post office address is 1715 Hearthglow Lane, Charlottesville, VA 22901 declare as follows under penalty of perjury.

1. I hold a Ph.D. degree in Electrical Engineering from the Massachusetts Institute of Technology awarded in 1984.
2. I hold a M.S. degree in Electrical Engineering from the University of Virginia awarded in 1978.
3. I hold a B.S. degree in Electrical Engineering from the University of Virginia awarded in 1977.

**AMENDMENT UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3627
PATENT
ATTORNEY DOCKET NO. 2000P7518 US (1009-026)
SERIAL NO. 09/528,693**

4. I am currently an associate professor of Electrical & Computer Engineering at the University of Virginia.
5. Since 1984, I have worked continually in the field of electrical engineering with particular emphasis in embedded computing with applications in control and signal processing.
6. During my career, I have been granted five U.S. patents for my own inventions in the field of embedded computing.
7. I have reviewed Application Serial No. 09/528,693.
8. I have reviewed U.S. Patents Nos. 5,804,803 (Cragun '803); 5,940,595 (Reber '595); 6,109,526 (Ohanian '526); and 5,978,773 (Hudetz '773).
9. Among the devices with which I was familiar prior to 03/20/2000, the filing date of Application Serial No. 09/528,693, were devices of the type recited in Cragun '803, Reber '595, Ohanian '526, and Hudetz '773.
10. I have reviewed the U.S. Patent Office Action dated 30 July 2003 ("Office Action 1") in Application Serial No. 09/528,693, which contains the following statement: "the Examiner hereby adopts the following definitions as the broadest reasonable interpretation in all his claim interpretations ... b. Controller 'A device on which other devices rely for access to a computer subsystem' ... e. Programmable logic device 'A logic chip that is programmed by the customer rather than by the

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manufacturer' ... a programmable logic controller is a PLD."

11. From the view of one skilled in the electrical engineering art as of 20 March 2000, the filing date of Application Serial No. 09/528,693, the definitions adopted in Official Action 1 are factually incorrect. Specifically, one skilled in the art would not interpret the term "programmable logic controller (PLC)" to mean 'A logic chip that is programmed by the customer rather than by the manufacturer'.
12. Instead, one skilled in the art would interpret the term "programmable logic controller (PLC)" to mean a device that follows programmed instructions to provide automated monitoring and/or control functions over a machine and/or process by evaluating a set of inputs. A PLC can be used, for example, to automate complex functions and/or control an industrial process, for example, in machining, packaging, materials handling, and/or other applications.
13. I have reviewed the U.S. Patent Office Action dated 17 December 2003 ("Office Action 2") in Application Serial No. 09/528,693, which contains the following statement: "it is unclear what structural elements make up the 'automatically interfacing to the Internet to access said web page based on said indicator.'"
14. That statement is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693. One skilled in the art would not find that "it is unclear what structural elements make up

AMENDMENT UNDER 37 C.F.R. 1.116
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the ‘automatically interfacing to the Internet to access said web page based on said indicator.’”

15. Rather, one skilled in the art would find ample and clearly linked corresponding structure for the recited function of claim 6. Specifically, page 4 of the specification recites “an Internet **interface 204 for automatically interfacing to the internet** using the label retrieved from the memory 200”; “the **interface** is provided by a human/machine interface (HMI) such as that provided by Siemens”; “[t]he HMI provides a **software interface** to industrial-type processors such as PLCs”; and “an **internet interface** is provided **that automatically interfaces to the internet** using the label stored in memory 200”.
16. As of 20 March 2000, one skilled in the art would recognize that these recited “interfaces” explicitly recite “software”, which one skilled in the art would recognize to run on and/or utilize known hardware.
17. Thus, one skilled in the art would recognize that these recited structures are adequate for enabling the recited function of claim 6, and clearly linked to the recited function of claim 6.
18. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: “Cragun ‘803 discloses ... alternatively ... Reber ‘595 discloses ... the RF device contains a PLC since the RF device is an

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‘active’ RF device and the RF device is coupleable to the product.”

19. That statement is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693. One skilled in the art would not find that “Cragun ‘803 discloses ... alternatively ... Reber ‘595 discloses ... the RF device contains a PLC since the RF device is an ‘active’ RF device and the RF device is coupleable to the product.”
20. Rather, one skilled in the art would interpret the term “PLC” to mean a programmable logic controller as defined in paragraph 12.
21. Accordingly, one skilled in the art would not find that “Cragun ‘803 discloses ... alternatively ... Reber ‘595 discloses ... the RF device contains a PLC since the RF device is an ‘active’ RF device and the RF device is coupleable to the product.”
22. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: “the claims are anticipated because of the inherent features (i.e. the old and well known structure and features of RF tags). However if not inherent, Ohanian directly teaches the use of RF tags in replace bar codes because, inter alia, bar codes may be obscured.”
23. That statement is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693. One skilled in the art would not find that “the claims are anticipated because of the

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inherent features (i.e. the old and well known structure and features of RF tags).

However if not inherent, Ohanian directly teaches the use of RF tags in replace bar codes because, inter alia, bar codes may be obscured.”

24. Rather, one skilled in the art would interpret the term “PLC” to mean a programmable logic controller as defined in paragraph 12.

25. Accordingly, one skilled in the art would not find that “the claims are anticipated because of the inherent features (i.e. the old and well known structure and features of RF tags). However if not inherent, Ohanian directly teaches the use of RF tags in replace bar codes because, inter alia, bar codes may be obscured.”

26. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: “Hudz directly or inherently discloses all the claimed features except it uses bar codes because, inter alia, bar codes may be obscured.”

27. That statement is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693. One skilled in the art would not find that “Hudz directly or inherently discloses all the claimed features except it uses bar codes because, inter alia, bar codes may be obscured.”

28. Rather, one skilled in the art would interpret the term “PLC” to mean a programmable

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logic controller as defined in paragraph 12.

29. Accordingly, one skilled in the art would not find that “Hudz directly or inherently discloses all the claimed features except it uses bar codes because, inter alia, bar codes may be obscured.”

I further declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signed this 28th day of February 2004



Dr. Ronald D. Williams



PATENT

Serial No. 09/528,693

Attorney Docket No. 2000P07518US (1009-026)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : James Wright et al.
Serial No. : 09/528,693
Filed : 20 March 2000
For : METHOD, SYSTEM AND APPARATUS FOR PROVIDING
PRODUCT INFORMATION OVER THE INTERNET
Art Unit : 3627
Examiner : Andrew J. Fischer
Docket No. : 2000P07518US (1009-026)

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPENDIX C

Filed herewith is a copy of the second Declaration of Dr. Ronald D. Williams that was submitted pursuant to 37 CFR 1.132.



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SERIAL NO. 09/528,693**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/528,693
Applicant James Wright et al.
Filed 20 March 2000
Title METHOD, SYSTEM AND APPARATUS FOR PROVIDING
PRODUCT INFORMATION OVER THE INTERNET
Art Unit 3627
Examiner Andrew J. Fischer

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.132

Sir:

I, Dr. Ronald D. Williams, a citizen of the United States, whose full post office address is
1715 Hearthglow Lane, Charlottesville, VA 22901 declare as follows under penalty of perjury.

1. I hold a Ph.D. degree in Electrical Engineering from the Massachusetts Institute of
Technology awarded in 1984.
2. I hold a M.S. degree in Electrical Engineering from the University of Virginia
awarded in 1978.
3. I hold a B.S. degree in Electrical Engineering from the University of Virginia
awarded in 1977.

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4. I am currently an associate professor of Electrical & Computer Engineering at the University of Virginia.
5. Since 1984, I have worked continually in the field of electrical engineering with particular emphasis in embedded computing with applications in control and signal processing.
6. During my career, I have been granted five U.S. patents for my own inventions in the field of embedded computing.
7. I have reviewed Application Serial No. 09/528,693.
8. I have reviewed U.S. Patents Nos. 5,804,803 (Cragun '803); 5,940,595 (Reber '595); 6,109,526 (Ohanian '526); and 5,978,773 (Hudetz '773).
9. Among the devices with which I was familiar prior to 03/20/2000, the filing date of Application Serial No. 09/528,693, were devices of the type recited in Cragun '803, Reber '595, Ohanian '526, and Hudetz '773.
10. Regarding Application Serial No. 09/528,693, I have reviewed the U.S. Patent Office Action dated 30 July 2003 ("Office Action 1") and the U.S. Patent Office Action dated 18 May 2004 ("Office Action 2").
11. Office Action 1 contains, and Office Action 2 implicitly references, the following statement: "the Examiner hereby adopts the following definitions as the broadest reasonable interpretation in all his claim interpretations ... b. Controller 'A device on

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which other devices rely for access to a computer subsystem' ... e. Programmable logic device 'A logic chip that is programmed by the customer rather than by the manufacturer'. It is the Examiner [sic] factual determination that a programmable logic controller is a PLD."

12. The Office Action provides no reason, factual or otherwise, for why "the Examiner" equated a "programmable logic controller" with a "PLD".
13. The Office Action provides no showing that **one skilled in the art** would equate a "programmable logic controller" with a "PLD".
14. From the view of one skilled in the electrical engineering art as of 20 March 2000, the filing date of Application Serial No. 09/528,693, the definition of a "programmable logic controller" adopted in Official Action 1, and implicitly referenced by Office Action 2, is factually incorrect.
15. Specifically, one skilled in the art would not interpret the term "programmable logic controller (PLC)" to mean "[a] logic chip that is programmed by the customer rather than by the manufacturer".
16. Instead, one skilled in the art would interpret the term "programmable logic controller (PLC)" to mean a device that follows programmed instructions to provide automated monitoring and/or control functions over a machine and/or process by evaluating a set of inputs. A PLC can be used, for example, to automate complex functions and/or

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control an industrial process, for example, in machining, packaging, materials handling, and/or other applications.

17. Alternatively, one skilled in the art would interpret the term “programmable logic controller (PLC)” to mean “a digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic to control through digital or analog input/output modules, various types of machines or processes”.
18. For evidence supporting these definitions, one skilled in the art would have looked to a standard setting body such as the National Electrical Manufacturers Association (NEMA). NEMA defines a programmable logic controller as “a digitally operating electronic apparatus which uses a programmable memory for the internal storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic to control through digital or analog input/output modules, various types of machines or processes”. See NEMA Standard ICS 3-1978, Part ICS3-304(5) (relevant pages attached hereto).
19. Office Action 2 contains the following statement: “[a]lthough the Williams Declaration states the Examiner’s definition is incorrect, the Williams Declaration fails to state why the Examiner’s definitions are not proper in this context. Moreover,

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not only does the Williams Declaration fail to provide objective evidence as to why the Examiner's definitions are improper, the Williams Declaration fails to provide evidence as to why Dr. Williams definitions should be controlling".

20. One skilled in the art would find that the definition provided for "programmable logic controller" in Office Action 1 is improper because it does not reflect the meaning of "programmable logic controller" as understood by one skilled in the art.
21. The facts of paragraphs 1 through 6 reasonably indicate that I am skilled in the art pertaining to Application 09/528,693 and have been since at least 1984.
22. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: "Reber '595 discloses ... a PLC""
23. That statement is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693.
24. Based on the definitions of a programmable logic controller provided in either paragraph 16 or 17, one skilled in the art would not find that "Reber '595 discloses ... a PLC" whatsoever.
25. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: "Ohanian directly teaches the use of RF tags (a PLC) in replace of bar codes".
26. That statement is factually incorrect, in view of the state of the electrical engineering

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art as of 03/20/2000, the filing date of Application Serial No. 09/528,693.


27. Based on the definitions of a programmable logic controller provided in either paragraph 16 or 17, one skilled in the art would not equate Ohanian's "RF tags" to a "PLC".
28. Accordingly, one skilled in the art would not find that "Ohanian directly teaches the use of RF tags (a PLC) in replace of bar codes".
29. I have reviewed U.S. Patent Office Action 2 in Application Serial No. 09/528,693, which contains the following statement: "Hudz directly or inherently discloses all the claimed features", implying that Hudetz discloses a "programmable logic controller".
30. That statement and implication is factually incorrect, in view of the state of the electrical engineering art as of 03/20/2000, the filing date of Application Serial No. 09/528,693.
31. Based on the definitions of a programmable logic controller provided in either paragraph 16 or 17, one skilled in the art would not find that "Hudz directly or inherently discloses all the claimed features" or a "programmable logic controller" whatsoever.

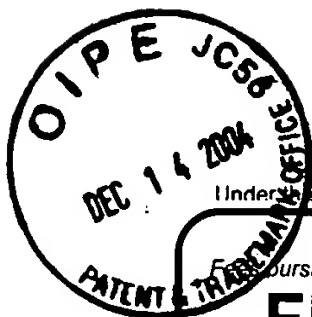
I further declare that all statements made herein of my own knowledge are true and that these statements were made with the knowledge that willful false statements and the like so made are

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punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signed this 4th day of August 2004


Dr. Ronald D. Williams



PTO/SB/17 (12-04)

Approved for use through 07/31/2006. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.

Pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 500.00)

Complete if Known

Application Number	09/528,693
Filing Date	20 March 2000
First Named Inventor	James Wright
Examiner Name	Andrew J. Fischer
Art Unit	3627
Attorney Docket No.	2000P07518US (1009-026)

METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 50-2504 Deposit Account Name: Michael N. Haynes

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
_____ - 20 or HP = _____ x _____ = _____						

HP = highest number of total claims paid for, if greater than 20

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
_____ - 3 or HP = _____ x _____ = _____			

HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____				

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Appeal Brief

Fees Paid (\$)

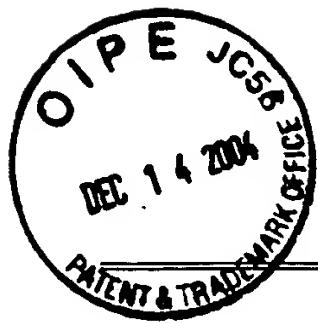
\$500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	40,014	Telephone	434-972-9988
Name (Print/Type)	Michael N. Haynes	Date	14 December 2004		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Pursuant to 37 C.F.R. § 1.10, I certify that I am personally depositing the following paper(s) or fee(s) with the "Express Mail Post Office to Addressee" service of the United States Postal Service on the above date in a sealed envelope (a) having the above-numbered Express Mail label and sufficient postage affixed, and (b) addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450

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Credit Card Payment Form (Form PTO-2038) (1 sheet)

Appeal Brief (16 sheets)

Appendix A (2 sheets)

Appendix B (8 sheets)

Appendix C (8 sheets)

Application No.:	09/528,693	Art Unit:	3627
Confirmation No.:	5947	Examiner:	Andrew J. Fischer
Application Filing Date:	20 March 2000	Inventor:	WRIGHT et al.
Document Submission Date:	14 December 2004	Docket:	2000P07518US (1009-026)

14 December 2004
Date

Eden Brown
Name of Person

Eden Brown
Signature of Person